MEDICAL JURISPRUDENCE†

By HARTLEY F. PEART, ESQ.
San Francisco

Responsibility of Physician for Acts of Nurse: Doctrine of Res Ipsa Loquitur in Cases of Treatment by Means of Infra-Red Rays

The District Court of Appeal for the Third Appellate District has just decided the case of *McCullough* vs. *Langer*, 91 Cal. App. Dec. 444, in which the facts were these: Plaintiff commenced action against a physician and a nurse employed by the physician for alleged improper use of an infra-red incandescent lamp which caused permanent injury to plaintiff's leg in the nature of a third-degree burn. A jury returned a verdict in favor of the nurse, but against the physician. Two physicians testified for the plaintiff that the third-degree burn was the result of submitting tender devitalized flesh of a bruised thigh to extreme heat from the infra-red light for too great a length of time. It further appeared from plaintiff's testimony that a compress was placed over plaintiff's bruised thigh and left undisturbed over the wound with the heat of the lamp applied thereto for more than four hours without any effort being made by the physician to ascertain the result of such treatment. Plaintiff introduced evidence to the effect that the lamp would generate 140 degrees of heat in one hour and that the maximum heat which should be applied to that wound, under the circumstances, was not to exceed 110 degrees Fahrenheit.

The defendant physician appealed from the judgment against him, and two of the reasons which he urged for reversal of the judgment were:

1. That the exoneration of the nurse from negligence exempted him from liability because the nurse actually administered the infra-red heat treatment, and

2. That the trial court erroneously applied the doctrine of *res ipsa loquitur*.

With respect to the first contention of the defendant physician the District Court of Appeal held that since the nurse was acting under the direction of the physician and not acting independently, the physician was liable not merely because he was the nurse's employer, but also because he was a joint participant in the act complained of by the plaintiff. The following portion of the Court's opinion indicates the tremendous legal responsibility placed upon physicians for the acts of nurses and other assistants:

> Under the circumstances of this case the nurse was presumed to attend the patient under the supervision and direction of her employer, Doctor Langer. As the *McInerney* case, *supra*, states, the employer "was therefore liable not merely under the rule of respondeat superior, *but rather as a joint participant in the acts complained of.*" (*Armstrong* vs. *Wallace*, 8 Cal. App. (2nd) 429, 439.) In the case last cited, this Court said:
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> "The surgeon had the power and, therefore, the duty to direct the nurse to count the sponges as a part of his work in the opening and closing of plaintiff's abdomen and the putting in and taking out of sponges, and *it was his responsibility to see that such work was done.*"

In the present case it was the *duty* of the doctor in his treatment of the patient to see that the compress and lamp were used in such a manner as to prevent the application of excessive heat and a consequent burning of the flesh. The supervision of the doctor is shown by his personal visits to the room of the patient and by the inquiry of the nurse addressed to him an hour before the burn was discovered as to whether she should not then change the compress and lamp, to which he replied, "Leave them until after his evening meal." The appellant was, therefore, not relieved of liability because of the verdict favorable to his codefendant.

With respect to the defendant physician's second contention, namely, that the trial court erroneously instructed the jury that the doctrine of *res ipsa loquitur* applied to the case, the District Court of Appeal stated that *res ipsa loquitur* ("the thing speaks for itself") applies to cases involving the negligence of a physician in the use of x-ray pictures taken for the purpose of diagnosing an ailment and also in the manner of actually treating the disorder. The Court said that in the present case the plaintiff was burned in some way unknown to him and as a result of the treatment of his injury by the physician and the nurse in his employ. It occurred while he was under the influence of opiates, which prevented him from knowing just what caused the burn. The Court then held that, under such circumstances, the doctrine of *res ipsa loquitur* was applicable and that the burden was on the physician to show that the third-degree burns were not occasioned by his negligence.

Hence, the court held mere proof that he was burned while undergoing treatment through the use of an infra-red incandescent lamp was sufficient to sustain the plaintiff's case and to cast responsibility upon the physician. The physician then had the burden of convincing the jury that he was not at fault.

† Editor's Note.—This department of CALIFORNIA AND WESTERN MEDICINE, containing copy submitted by Hartley F. Peart, Esq., will contain excerpts from and syllabi of recent decisions and analyses of legal points and procedures of interest to the profession.

SPECIAL ARTICLES

DR. PHILIP MILLS JONES (1870–1916)*

Philip Mills Jones, M.D., a member of the Board of Trustees of the Association, secretary of the Medical Society of the State of California, and editor of the "California State Journal of Medicine" died in San Francisco, November 27, 1916, from pneumonia.

He was born in Brooklyn, January 17, 1870, and after attending the Polytechnic Institute of Brooklyn, from which he was graduated in 1886, he entered the academic course in New York University and then took his course in medicine at the Long Island College Hospital, Brooklyn, and was graduated in 1891. After practicing in Brooklyn until 1900, he moved to California and became associated with the University of California, in the Department of Archeology. He took a prominent part in the reorganization of the Medical Society of the State of California in 1902 and since that time had been secretary of that constituent state association and editor of its official organ. In order to serve his state association more effectively, and because he had found difficulty in securing lawyers who appreciated the medical phases of legal questions, in October, 1916, Doctor Jones passed the necessary examinations and was admitted to the bar to practice as an attorney and counselor at law in all the courts in the State of California.

He represented his state association in the House of Delegates of the American Medical Association continuously from the session of 1903 to the session of 1908. At this latter session he was elected a member of the Board of Trustees of the American Medical Association and served in that capacity up to the time of his death. He was a member of the National Committee of One Hundred on

* Editor's Note.—In connection with comment made in this issue, concerning the late Philip M. Jones, founder-editor of the official journal of the California Medical Association, and because it has taken months to locate a photograph of Doctor Jones, the obituary notice which appeared in the *Journal of the American Medical Association* of December 2, 1916, is here reprinted for the information of present-day members, and as a contribution to the historical files of the California Medical Association. For editorial comment, see page 1.